

LAW OFFICE

**CHRISTOPHER B. MYHRUM**

2014 DEC -9 AM 6:25

EX-101111-1

December 3, 2014

*Via email and first-class mail*  
*nchorover@sswg.com*

Nora J. Chorover, Esq.  
Stern, Shapiro, Weissberg & Garvin, LLP  
90 Canal Street, 5<sup>th</sup> Floor  
Boston, MA 02114

Re: 60-Day Notice of Violations and Intent to File Suit Regarding  
Noncompliance with Federal Clean Water Act's Industrial Stormwater  
Discharge Requirements: 1241 Park Street, Palmer, MA

Dear Ms. Chorover:

This is to respond to your October 30, 2014 letter to L. Dale Pretz of Rathbone Precision Metals, Inc. (Rathbone) regarding stormwater discharges from the Rathbone facility at 1241 Park Street, Palmer, MA.

This response tracks the headings and numbered paragraphs set forth in your letter.

**RATHBONE'S VIOLATIONS AND DATES OF VIOLATIONS**

1. Failure to Comply with the Permit's Monitoring, Inspection, and Reporting Requirements

Rathbone has collected and analyzed stormwater on a quarterly basis throughout the periods of time identified in your letter.

1500 Main Street, Suite 2010  
P.O. Box 15407  
Springfield, MA 01115

413-342-4145 (Office)  
413-221-4493 (Cell)

chrismyhrum@comcast.net

Rathbone is not required to monitor TSS, copper and iron. Rathbone falls within SIC 3316, which is covered by only Sector F-1 under the Multi-Sector General Permit as cited in your letter. The MSGP requires Rathbone to monitor for aluminum and zinc.

Rathbone's Notice of Intent correctly identified the F-1 Sector until an error occurred in the filing of a revised electronic NOI on or about November 15, 2011. Rathbone has contacted the EPA Call Center, and, based on a telephone conversation with EPA's Emily Gorman, has submitted an eNOI with the correct sector information.

Rathbone has consistently met its monitoring obligations for aluminum at outfalls D-001 and D002. The violations alleged in your letter all appear to relate to a period of time when Rathbone was unable to file electronically due to failures in the EPA Central Data Exchange System. At EPA's instruction, Rathbone, via its consultant, Environmental Compliance Services, submitted the Fourth Quarter 2011 through Fourth Quarter 2012 and the 2011 and 2012 annual reports timely through the United States Postal Service.

Rathbone met the four quarter average for aluminum at Outfall DA-002 as of September 8, 2010. Rathbone met the four quarter average at Outfall DA-001 for aluminum as of August 10, 2012. Rathbone has not monitored aluminum at either DA-001 or DA-002 since the dates when the four quarter averages were met respectively for each outfall.

Rathbone has consistently monitored for zinc at Outfall DA-001.

Rathbone has not consistently monitored for zinc at Outfall DA-002. In or about September 2011, Rathbone's consultant stopped collecting samples at DA-002. Rathbone does not know why. Rathbone has advised its consultant of the error. Rathbone's consultant has reinstituted monitoring of Outfall DA-002 for zinc as of November 24, 2014, and will continue to do so consistent with applicable requirements, going forward.

## 2. Failure to Implement Adequate Control Measures and Corrective Action

Rathbone is currently not required to implement control measures and corrective action for aluminum.

Rathbone has identified and implemented control measures and corrective action for zinc.

Identification and application of control measures and corrective actions at Rathbone have presented conceptual and substantive problems and continue to do so. Ultimately, as there appears to be no meaningful relationship between zinc concentrations in stormwater and any site uses or activities, the problem lies in the MSGP's 0.04 mg/l limit (40 parts/billion) to be achieved in a four quarter rolling average.

Your description of Clean Water Action in your letter does not state whether CWA actually visits or observes facilities before communicating with MSGP permittees about alleged violations.

Observation of site conditions in this case would reveal that Rathbone maintains no outside storage of raw materials or finished products. (There is an above ground storage tank for back up fuel oil and a silo-like tank for storing nitrogen, but each involves no environmental exposure. Certainly these tanks bear no relationship to zinc or aluminum concentrations in stormwater.)

Rathbone does maintain two outdoor dumpsters, one for generic facility rubbish, the other for holding process sludge that is transported and managed off site. Neither dumpster is a suspected source of zinc, though dumpster lining has been implemented along with a redesigned cover to seal the dumpster from rainwater.

Parking lot sweeping by machine and by broom do not appear to provide reductions in stormwater concentrations that would encourage expectations that four quarter rolling average for zinc will be achieved. CWA, from its own work, must be aware how problematic the MSGP's 0.04 mg/l zinc level has been and continues to be.

If CWA has information about control measures and corrective actions that have effectively accomplished the MSGP's zinc target (or, more properly, targets, given that the MSGP relates the zinc target levels to water hardness), Rathbone would be grateful to receive it. At this point, Rathbone is going to the extreme of looking at one particular galvanized fence post that is, for all practical purposes, a consumer product in an application identical to consumer uses.

Rathbone has included accounts of its ongoing efforts to address zinc exceedances in quarterly and annual reports, though its work has been more extensive. A simple site visit will reveal that there is no identifiable manufacturing related source of zinc.

While disappointed that retained consulting expertise did not maintain appropriate testing schedules, Rathbone points out the obvious: There is no relationship between quarterly monitoring oversights and inability to achieve a rolling quarterly average of 0.04 mg/l for zinc concentrations in stormwater. Rathbone's control measures have proceeded based on DA-001 results. DA-002 results would not have affected Rathbone's action steps.

CWA asserts that Rathbone has not modified "its control measures 'as expeditiously as practicable' to control its pollutant discharges" and "cannot know how its existing control measures are performing [,] and therefore cannot have been modifying them as necessary to minimize stormwater pollutant discharges."

In support of CWA's opinion, your letter cites Rathbone's failures "to monitor for TSS, copper, and iron at either of its outfalls or for aluminum at Outfall D-002." However, as explained above, Rathbone was not obliged to monitor for TSS, copper and iron at all, or for aluminum at Outfall D-002 during the periods of time when CWA, as we understand it, maintains control measure modifications did not occur.

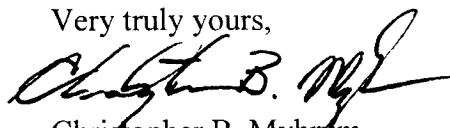
## CONCLUSION

Rathbone trusts this response meets CWA's concerns about multiple MSGP violations and demonstrates the company's record of compliance. Rathbone acknowledges that DA-002 has not been monitored for zinc after the April-June 2011 quarterly sampling round due to outside consultant error, but monitoring has resumed as of November 24, 2014. Rathbone has attempted control measures and corrective actions. None has sufficed to offer promise that the 0.04 mg/l four quarter rolling average for zinc can be achieved. Rathbone's ongoing efforts to control zinc remain stymied by inability to identify a likely manufacturing related source.

Rathbone invites CWA to offer such expertise as it can regarding how to address zinc in stormwater under these circumstances. In similar vein, Rathbone would like to know if CWA has available to it information about problems in achieving the MSGP's 0.04 mg/l rolling average threshold for zinc. Rathbone and its consultants have not been able to find out how extensive the problems posed by the MSGP zinc level are, but compliance issues seem to be widespread.

Rathbone can acknowledge consultant discontinuation of zinc monitoring at DA-002, but Rathbone's consultant has resumed monitoring. There are no other items to address going forward that would provide a basis for seeking equitable relief. USEPA and MADEP are aware of the DA-002 monitoring mistake. Rathbone will be pleased to discuss this matter further, especially regarding CWA expertise on how to approach zinc control and corrective measures in the absence of an identifiable source. Litigation is not appropriate here, however, given the congressional intent and public policies embodied in the Clean Water Act's Citizen Suit provisions.

Very truly yours,



Christopher B. Myhrum

CBM/dgm

cc: (by certified mail)  
Curt Spalding, Regional Administrator  
EPA New England, Region 1,  
5 Post Office Square; Ste. 100  
Boston MA 02109

☒ Gina McCarthy, Administrator  
US EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Eric Holder, Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

David W. Cash, Commissioner  
Massachusetts Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Brandon Robb, Facilities Manager/Manufacturing Engineer  
Rathbone Precision Metals, Inc.  
1241 Park St.  
Palmer, MA 01069

Law Office of Christopher B. Myrdum  
1300 Main Street, Suite 2010  
PO Box 15407  
Springfield, MA 01115

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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL**<sup>TM</sup>



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Gina McCarthy, Administrator  
US EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

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